

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

RICHARD HENDERSON,

Plaintiff,

v.

NESMETAJU, LLC d/b/a
LEADSMARKET.COM,

Defendant.

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Civil Action No.

3:21-cv-255

Jury Trial Demanded

COMPLAINT

RICHARD HENDERSON (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NESMETAJU, LLC d/b/a LeadsMarket.com (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227, *et seq.*, and § 302.101 of the Texas Business & Commercial Code.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

3. Supplemental jurisdiction for Plaintiff’s related state law claims arises under 28 U.S.C. §1367.

1 15. Defendant is an advertisement agency that purports to offer loans and financial
2 services to consumers.

3 16. Defendant engages in telemarketing in order to solicit the interest for such loans.

4 17. Between November 2020 through at least December of 2020, Defendant sent a
5 series of solicitation text messages to Plaintiff in order to direct Plaintiff to apply for loans
6 operated by Defendant.

7 18. Defendant operates through several alter egos or subsidiaries known as *inter alia*
8 “Leads Market” and “Rush In Loans.”

9 19. Defendant’s text messages to Plaintiff utilized automatically generated and/or
10 pre-written messages.

11 20. Henderson did not consent to these messages from Defendant.

12 21. Defendant’s text messages were not made for “emergency purposes.”

13 22. Defendant knew its text messages were unwanted, therefore, all texts could have
14 only been made solely for purposes of harassment.

15 23. For instance, following the receipt of the harassing messages, Plaintiff replied
16 “Stop” and received a message which indicated he was taken off of their internal contact list.
17 However, despite these assurances, Defendant continued to contact Plaintiff.

18 24. Defendant’s incessant texts were bothersome, disruptive, and frustrating for
19 Plaintiff to endure.

20 25. In total, Defendant placed at least 19 text messages to Plaintiff, at dates/times
21 including the following:
22

Date/Time:	Caller ID:
November 12, 2020 9:44 am Central	(608) 623-6433
November 12, 2020 9:46 am Central	(308) 470-4125

November 12, 2020 10:13 am Central	(260) 308-4294
November 12, 2020 10:23 am Central	(219) 506-7727
November 12, 2020 10:43 am Central	(608) 879-1068
November 12, 2020 11:19 am Central	(308) 730-4366
November 12, 2020 11:19 am Central	(260) 308-4991
November 12, 2020 11:33 am Central	(308) 470-4197
December 3, 2020 10:05 am Central	(440) 636-1794
December 3, 2020 9:44 am Central	(385) 999-7405
December 3, 2020 9:42 am Central	(440) 636-1816
December 3, 2020 12:26 pm Central	(319) 946-4013
December 3, 2020 12:26 pm Central	(321) 274-4071
December 3, 2020 12:29 pm Central	(248) 780-8936
December 3, 2020 12:29 pm Central	(440) 664-1403
December 3, 2020 12:32 pm Central	(608) 938-8515
December 3, 2020 12:34 pm Central	(440) 636-1088
December 8, 2020 11:21 am Central	(913) 393-9859
December 8, 2020 11:29 am Central	(816) 542-3451

26. Upon information and belief, Plaintiff received additional messages from Defendant not including in the above-list.

27. All of the messages sent by Defendant to Henderson contained pre-written messages with a link to a website to sign up to qualify for a loan.

28. As a result of the persistence of the unwanted messages, Mr. Henderson tried to ascertain who was responsible for sending these unsolicited messages. Plaintiff followed the links contained in the text messages.

29. For instance, Plaintiff clicked the link contained in one of the text messages and was sent to a website for RushIn Loans, which was operated by Leaksmarket.com.

30. Defendant owns both “Rush In” and “Leads Market”.

31. The text messages were generic and pre-scripted.

32. Accordingly, it was clear, the texts were part of a large text message “blast” rather than messages individually tailored to Plaintiff.

1 33. Plaintiff believes and therefore avers that Defendant utilizes a dialing system
2 which uses a random or sequential number generator to store telephone numbers.

3 34. Upon information and belief, Defendant utilizes a dialing system which uses a
4 random or sequential number generator to select the sequence of calls/text messages to be
5 sent/made.

6 35. Accordingly, Defendant sent text messages to Plaintiff using an automatic
7 telephone dialing system.

8 36. As a result of the foregoing, Plaintiff experienced frustration, annoyance,
9 irritation and a sense that his privacy has been invaded by Defendant.

10 37. Furthermore, Defendant failed to register as a telephone solicitor with the Texas
11 Secretary of State, despite the obligation to do so.

12 38. The foregoing acts and omissions were in violation of the TCPA and Texas
13 Business and Commerce Code.

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15
16 **COUNT I**
17 **DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(b)**

18 39. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
19 at length herein.

20 40. The TCPA prohibits placing calls using an automatic telephone dialing system or
21 automatically generated or prerecorded voice to a cellular telephone except where the caller has
22 the prior express consent of the called party to make such calls or where the call is made for
23 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

24 41. Defendant initiated numerous text messages to Plaintiff's cellular telephone
25 number using an automatic telephone dialing system.

1 42. Specifically, Defendant utilizes a dialing system which uses a random or
2 sequential number generator to store telephone numbers.

3 43. Defendant utilizes a dialing system which uses a random or sequential number
4 generator to select the sequence of calls/text messages to be sent/made.

5 44. Defendant's texts were not made for "emergency purposes."

6 45. Defendant's texts to Plaintiff's cellular telephone were made without any prior
7 express consent.

8 46. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do
9 Not Call Registry and despite the fact that Plaintiff repeatedly told Defendant to stop
10 telephone solicitations.

11 47. Defendant's acts as described above were done with malicious, intentional,
12 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
13 purpose of harassing Plaintiff.

14 48. The acts and/or omissions of Defendant were done unfairly, unlawfully,
15 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
16 defense, legal justification or legal excuse.

17 49. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
18 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
19 damages.
20

21 **COUNT II**
22 **DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(c)**

23 50. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
24 at length herein.
25

53. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton, and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

55. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble damages.

56. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

58. Defendant is a “telephone solicitor” as defined by § 301.001(5) of the Texas Business & Commerce Code.

1 59. Plaintiff received all texts from Defendant in Texas and is entitled to other relief
2 under Texas law.

3 60. §302.101 of the Texas Business & Commerce Code prohibits sellers from
4 engaging in telephone solicitation from a location in Texas or to a purchaser located in Texas
5 unless the seller obtains a registration certificate from the Office of the Secretary of State for the
6 business location from which the solicitation is made.

7 61. Defendant violated §302.101 of the Texas Business & Commercial Code when
8 its representatives engaged in continuous and repetitive telephone solicitation of Plaintiff
9 without obtaining a registration certificate from the Office of the Secretary of State.

10 62. §302.302(a) of the Texas Business & Commerce Code provides that a person
11 who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
12 Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover
13 all reasonable costs of prosecuting the action, including court costs and investigation costs,
14 deposition expenses, witness fees, and attorney fees.
15

16 WHEREFORE, Plaintiff, RICHARD HENDERSON, respectfully prays for judgment as
17 follows:

- 18 a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. §
19 227(b)(3)(A));
- 20 b. Statutory damages of \$500.00 per text/call (as provided under 47 U.S.C.
21 § 227(b)(3)(B));
- 22 c. Treble damages of \$1,500.00 per text/call (as provided under 47 U.S.C. §
23 227(b)(3));
- 24 d. Additional treble damages of \$1,500.00 per text/call (as provided under
25 47 U.S.C. § 227(c);
- e. Statutory damages of \$5,000 per violation (as provided under
 §302.302(a) of the Texas Business & Commerce Code);

- 1 f. All reasonable attorneys' fees, witness fees, court costs and other
2 litigation costs incurred by Plaintiff pursuant to. §302.302(a) of the Texas
3 Business & Commerce Code
4 g. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3)); and
5 h. Any other relief this Honorable Court deems appropriate.

6 **DEMAND FOR JURY TRIAL**

7 PLEASE TAKE NOTICE that Plaintiff, RICHARD HENDERSON, demands a jury trial
8 in this case.

9 Respectfully submitted,

10 Dated: September 15, 2021

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